

AMENDED IN ASSEMBLY APRIL 14, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1651

Introduced by Assembly Member Ortiz

January 8, 1998

An act to amend Section 340.1 of the Code of Civil Procedure, relating to commencement of actions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1651, as amended, Ortiz. Childhood sexual abuse: time of commencing action.

Existing law requires that an action for recovery of damages suffered as a result of childhood sexual abuse, as defined, be commenced within 8 years of the date the plaintiff attains the age of majority or within 3 years of the date the plaintiff discovers or reasonably should have discovered that the psychological injury or illness occurring after the age of majority was caused by sexual abuse, whichever occurs later, and states that it applies to any action filed on or after January 1, 1991, and revives causes of action which had otherwise lapsed.

This bill would specify that these provisions apply to any such civil action brought against any person or entity under any theory of liability, and that the bill applies to actions commenced on or after January 1, 1991, and still pending on the effective date of the bill, as well as to any cause of action commenced on or after the effective date of the bill, *except as specified*.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 340.1 of the Code of Civil
2 Procedure is amended to read:
3 340.1. (a) In any civil action for recovery of damages
4 suffered as a result of childhood sexual abuse, brought
5 against any person or entity responsible for the damages
6 upon any theory of liability, the time for commencement
7 of the action shall be within eight years of the date the
8 plaintiff attains the age of majority or within three years
9 of the date the plaintiff discovers or reasonably should
10 have discovered that psychological injury or illness
11 occurring after the age of majority was caused by the
12 sexual abuse, whichever period expires later.
13 (b) “Childhood sexual abuse” as used in this section
14 includes any act committed ~~by the defendant~~ against the
15 plaintiff that occurred when the plaintiff was under the
16 age of 18 years and that would have been proscribed by
17 Section 266j of the Penal Code; Section 285 of the Penal
18 Code; paragraph (1) or (2) of subdivision (b), or of
19 subdivision (c), of Section 286 of the Penal Code;
20 subdivision (a) or (b) of Section 288 of the Penal Code;
21 paragraph (1) or (2) of subdivision (b), or of subdivision
22 (c), of Section 288a of the Penal Code; subdivision (h),
23 (i), or (j) of Section 289 of the Penal Code; Section 647.6
24 of the Penal Code; or any prior laws of this state of similar
25 effect at the time the act was committed. *Nothing in this*
26 *subdivision limits the availability of causes of action*
27 *permitted under subdivision (a), including causes of*
28 *action against persons or entities other than the alleged*
29 *perpetrator of the abuse.*
30 (c) Nothing in this section shall be construed to alter
31 the otherwise applicable burden of proof, as defined in
32 Section 115 of the Evidence Code, that a plaintiff has in
33 a civil action subject to this section.

1 (d) Every plaintiff 26 years of age or older at the time
2 the action is filed shall file certificates of merit as specified
3 in subdivision (e).

4 (e) Certificates of merit shall be executed by the
5 attorney for the plaintiff and by a licensed mental health
6 practitioner selected by the plaintiff declaring,
7 respectively, as follows, setting forth the facts which
8 support the declaration:

9 (1) That the attorney has reviewed the facts of the
10 case, that the attorney has consulted with at least one
11 mental health practitioner who is licensed to practice and
12 practices in this state and who the attorney reasonably
13 believes is knowledgeable of the relevant facts and issues
14 involved in the particular action, and that the attorney
15 has concluded on the basis of that review and consultation
16 that there is reasonable and meritorious cause for the
17 filing of the action. The person consulted may not be a
18 party to the litigation.

19 (2) That the mental health practitioner consulted is
20 licensed to practice and practices in this state and is not
21 a party to the action, that the practitioner is not treating
22 and has not treated the plaintiff, and that the practitioner
23 has interviewed the plaintiff and is knowledgeable of the
24 relevant facts and issues involved in the particular action,
25 and has concluded, on the basis of his or her knowledge
26 of the facts and issues, that in his or her professional
27 opinion there is a reasonable basis to believe that the
28 plaintiff had been subject to childhood sexual abuse.

29 (3) That the attorney was unable to obtain the
30 consultation required by paragraph (1) because a statute
31 of limitations would impair the action and that the
32 certificates required by paragraphs (1) and (2) could not
33 be obtained before the impairment of the action. If a
34 certificate is executed pursuant to this paragraph, the
35 certificates required by paragraphs (1) and (2) shall be
36 filed within 60 days after filing the complaint.

37 (f) Where certificates are required pursuant to
38 subdivision (d), separate certificates shall be filed for
39 each defendant named in the complaint.

1 (g) A complaint subject to subdivision (d) may not be
2 served upon the defendant or defendants until the court
3 has reviewed the certificates of merit filed pursuant to
4 subdivision (e) and has found, in camera, based solely on
5 those certificates of merit, that there is reasonable and
6 meritorious cause for the filing of the action. At that time,
7 the complaint may be served upon the defendant or
8 defendants. The duty to serve the defendant or
9 defendants with process shall not attach until that time.

10 (h) A violation of this section may constitute
11 unprofessional conduct and may be the grounds for
12 discipline against the attorney.

13 (i) The failure to file certificates in accordance with
14 this section shall be grounds for a demurrer pursuant to
15 Section 430.10 or a motion to strike pursuant to Section
16 435.

17 (j) In any action subject to subdivision (d), the
18 defendant or defendants may not be named except by
19 “Doe” designation in any pleadings or papers filed in the
20 action until there has been a showing of corroborative
21 fact as to the charging allegations against any defendant
22 alleged to have committed an act or acts of childhood
23 sexual abuse against the plaintiff.

24 (k) At any time after the action is filed, plaintiff may
25 apply to the court for permission to amend the complaint
26 to substitute the name of the defendant or defendants for
27 the fictitious designation, as follows:

28 (1) The application shall be accompanied by a
29 certificate of corroborative fact executed by the attorney
30 for the plaintiff. The certificate shall declare that the
31 attorney has discovered one or more facts corroborative
32 of one or more of the charging allegations against a
33 defendant or defendants, and shall set forth in clear and
34 concise terms the nature and substance of the
35 corroborative fact. If the corroborative fact is evidenced
36 by the testimony of a witness or the contents of a
37 document, the identity and location of the witness or
38 document shall be included in the certificate. For
39 purposes of this section, a fact is corroborative of an
40 allegation if it confirms or supports the allegation. The

1 opinion of any mental health practitioner concerning the
2 plaintiff shall not constitute a corroborative fact for
3 purposes of this section.

4 (2) Where the application to name a defendant is
5 made prior to that defendant's appearance in the action,
6 neither the application nor the certificate of
7 corroborative fact by the attorney shall be served on the
8 defendant or defendants, nor on any other party or their
9 counsel of record.

10 (3) Where the application to name a defendant is
11 made after that defendant's appearance in the action, the
12 application shall be served on all parties and proof of
13 service thereof provided to the court, but the certificate
14 of corroborative fact by the attorney shall not be served
15 on any party or their counsel of record.

16 (l) The court shall review the application and the
17 certificate of corroborative fact in camera and, based
18 solely on the certificate and any reasonable inferences to
19 be drawn therefrom, shall, if one or more facts
20 corroborative of one or more of the charging allegations
21 against a defendant has been shown, order that the
22 complaint may be amended to substitute the name of the
23 defendant or defendants.

24 (m) The court shall keep under seal and confidential
25 from the public and all parties to the litigation other than
26 the plaintiff any and all certificates of corroborative fact
27 filed pursuant to subdivision (k).

28 (n) Upon the favorable conclusion of the litigation
29 with respect to any defendant for whom a certificate of
30 merit was filed or for whom a certificate of merit should
31 have been filed pursuant to this section, the court may,
32 upon the motion of a party or upon the court's own
33 motion, verify compliance with this section by requiring
34 the attorney for the plaintiff who was required by
35 subdivision (e) to execute the certificate to reveal the
36 name, address, and telephone number of the person or
37 persons consulted with pursuant to subdivision (e) that
38 were relied upon by the attorney in preparation of the
39 certificate of merit. The name, address, and telephone
40 number shall be disclosed to the trial judge in camera and

1 in the absence of the moving party. If the court finds
2 there has been a failure to comply with this section, the
3 court may order a party, a party's attorney, or both, to pay
4 any reasonable expenses, including attorney's fees,
5 incurred by the defendant for whom a certificate of merit
6 should have been filed.

7 (o) The amendments to this section enacted at the
8 1990 portion of the 1989–90 Regular Session shall apply to
9 any action commenced on or after January 1, 1991,
10 including any action otherwise barred by the period of
11 limitations in effect prior to January 1, 1991, thereby
12 reviving those causes of action which had lapsed or
13 technically expired under the law existing prior to
14 January 1, 1991.

15 (p) The Legislature declares that it is the intent of the
16 Legislature, in enacting the amendments to this section
17 enacted at the 1994 portion of the 1993–94 Regular
18 Session, that the express language of revival added to this
19 section by those amendments shall apply to any action
20 commenced on or after January 1, 1991.

21 (q) The ~~amendment to subdivision (a)~~ *amendments*
22 *to this section* enacted at the 1998 portion of the 1997–98
23 Regular Session shall apply to any action commenced on
24 or after January 1, 1991, and still pending on the effective
25 date of ~~that amendment~~ *those amendments*, and to any
26 action commenced on or after the effective date of ~~that~~
27 ~~amendment~~ *those amendments*, including any action or
28 causes of action which would have been barred by the
29 laws in effect prior to that effective date, or by any
30 interpretations thereof. *However, nothing in this*
31 *subdivision is intended to revive actions or causes of*
32 *action as to which there has been a final adjudication prior*
33 *to the effective date of amendments to this section*
34 *enacted at the 1998 portion of the 1997–98 Regular*
35 *Session.*